

## **REMARKS**

Claims 22-44 are all the claims pending in the application, claims 1-21 having previously been cancelled, and claims 22-42 having previously been added. Claims 22 and 42 are the only independent claims.

Claims 22-33, 37, and 39-44 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Stratton (6,538,185) in view of an undated publication relating to a Yamaha MFC10 MIDI Foot Controller (referred to herein as MFC10). Claim 34 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Stratton and MFC10, and further in view of Blish (7,372,453). Claim 38 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Stratton and MFC10, and further in view of Gillaspay (5,506,371). Applicant respectfully traverses these rejections, and requests reconsideration and allowance of the pending claims in view of the following arguments.

### **Rejection under §103(a)**

Claims 22-33, 37, and 39-44 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Stratton in view of MFC10.

### **Claims 22 and 42**

Independent claim 22 is directed toward a customizable aggregated floor controller and includes “a mounting frame comprising a plurality of predetermined mounting locations structured to simultaneously secure said plurality of individual foot controller modules . . . wherein each of said plurality of mounting locations is structured to define a separate aperture sized to receive an associated one of said plurality of individual foot controller modules.” The Office Action indicates that the various tiers and elements 41 of Stratton teach the claimed mounting locations. Applicant respectfully disagrees.

Applicant’s review of Fig. 1 of Stratton finds a pedal board assembly 1 that includes three tiers; namely, top tier 22, middle tier 23, and bottom tier 24. The top tier 22 is shown having panel 34. Stratton describes this feature as follows: “The top tier 22 is preferably level or flat, without tilt or pitch, and in the illustrated example, is fixed in a flat relation to hold special effects pedals flat.” (Stratton col. 3, lines 9-12) (emphasis added). The middle tier 23 is formed by an elongate middle panel 37 and appears to be mounted with a slight tilt or pitch. (Stratton

col. 3, lines 13-15). The bottom tier 24 is described as being variable in pitch or tilt and formed of three individual panels 41, each separately supported by supports 42 and held therein by screws 43. (Stratton col. 3, lines 19-21).

Stratton clearly emphasizes the use of panels in each of the tiers 22, 23, 24. It is on these panels that the various pedals and sound effects generators are placed. Such a configuration is quite different than what is required in claim 22. For instance, the Office Action equates the tiers 22, 23, 24 and associated panels with the claimed “plurality of mounting locations.” However, claim 22 is vastly different since it recites “each of said plurality of mounting locations is structured to define a separate aperture.” The distinction is that the so-called mounting locations of Stratton are flat or angled panels, whereas claim 22 recites an “aperture.” An aperture is not the same as a panel.

Therefore, for the reasons presented above, even if one skilled in the art were to combine the teachings of Stratton in view of MFC10 in the manner asserted, claim 22 would be patentable since all of the recited claim elements are not taught or reasonably suggested. Independent claim 42 includes language similar to that of claim 22, and thus, is believed to be patentable for reasons similar to those discussed with regard to claim 22.

The rejected dependent claims are believed to be patentable at least by virtue of their respective dependence on the patentable independent claims 22 and 42. However, notwithstanding the above, Applicant provides the following additional comments on the following dependent claims.

#### **Claim 24**

Claim 24 requires that “said plurality of predetermined mounting locations are structured to define uniformly spaced mounting holes sized to receive a fastener to secure an associated one of said plurality of individual foot controller modules.”

The Office Action contends that Stratton appears to show uniformly spaced mounting holes in Fig. 1, as depicted by small black dots on the lower and upper portions of each panel. Applicant submits that such “black dots” appear to be related to screws 39, as shown in Fig. 4 of Stratton. Stratton states that screws 39 are used to affix middle panel 37 to support 38. (Stratton col. 3, lines 15-17). Claim 24 is distinguishable since it requires “uniformly spaced mounting holes sized to receive a fastener to secure an associated one of said plurality of individual foot

controller modules.” The distinction is that claim 24 relates to securing an individual foot controller module, whereas screws 39 are for affixing panel 37.

### **Claims 25 and 26**

Claims 25 and 26 each include limitations that further define a length and width of at least some of the mounting locations. The Office Action contends that the size of each panel is deemed to be an obvious matter of engineering design choice. (Office Action pg. 4). Applicant respectfully disagrees for the following reasons.

The Action is silent as to the basis for the conclusion that it would have been an obvious matter of engineering design to define at least some of the mounting locations as called for in these claims. In particular, Applicant cannot determine the basis for the stated rejection such that it cannot be determined if the Examiner is (1) relying upon the legal precedent provisions of MPEP § 2144.04; (2) taking official notice; or (3) relying upon personal knowledge. Applicant requests clarification of the rejection to these claims in the event the rejection is maintained.

### **Claims 33, 37, 39**

Claim 33 recites “at least one of said plurality of individual foot controller modules comprises a foot-operated tactile control pad.” Office Notice was taken by the Examiner for this claim feature. In particular, the Examiner relied upon volume pedals having a treadle that can be felt. (Office Action, pg. 4). The Examiner appears to have mistaken this claim feature with that of a tactile feedback system. Claim 33 does not recite such a tactile feedback device, but rather recites a “foot-operated tactile control pad.” Applicant submits that such a feature is not taught or suggested by the cited art. Claim 44 includes a similar feature and is therefore similarly distinguishable.

Claim 37 recites “said foot-operated tactile control pad comprises a pressure-sensor array.” The Office Action alleges that “the use of an array is deemed to be synonymous with plural modules.” (Office Action, pg. 4) (emphasis in original). Applicant submits that the Examiner appears to have mistaken the “array” of this claim as being the same as the plurality of modules. Recall that claim 37 depends from claim 33, which recites “wherein at least one of said plurality of individual foot controller modules comprises a foot-operated tactile control pad.” This means that at least one foot controller module comprises a foot-operated tactile

control pad that comprises a pressure-sensor array.” Accordingly, the claimed pressure-sensor array” is not synonymous with plural modules as alleged by the Examiner. The cited references simply do not teach or suggest the claimed “pressure-sensor array.”

Claim 39 recites “wherein at least one of said plurality of individual foot controller modules comprises an impact sensor.” The Action alleges that a foot pedal and switch of MFC10 respond to an impact. Such an interpretation construes the term “impact sensor” in a manner that not only is inconsistent with the specification of the present application, but how this term is understood by one of ordinary skill in the pertinent art.

### **Claims 34 and 38**

Claim 34 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Stratton and MFC10, and further in view of Blish. Claim 38 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Stratton and MFC10, and further in view of Gillaspay.

Applicant has demonstrated above that Stratton and MFC10 do not teach or suggest various features recited in independent claim 22. Applicant further submits that none of the other references of record supply any of the deficiencies of Stratton and MFC10. Therefore, for the reasons presented above, even if one skilled in the art were to combine the teachings of the asserted references in the manner alleged, dependent claims 34 and 38 would be patentable at least by virtue of their dependency upon patentable independent claim 22.

### **Allowable subject matter**

Lastly, Applicant notes with appreciation that claims 35 and 36 have been indicated as being allowable if rewritten in independent form. However, at this time, Applicant respectfully declines this invitation in view of the comments presented herein.

**CONCLUSION**

In view of the above, Applicant submits that the currently pending claims are in condition for allowance. However, should there remain any outstanding issues, it is respectfully requested that the Examiner telephone the undersigned so that such issues may be resolved as expeditiously as possible.

The Commissioner is hereby authorized to charge any additional fees which may be required in this application to deposit account No. 06-1135.

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Respectfully submitted,

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